IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL WRIT PETITION NO.1267/2006
(Chairman & Managing Director, Jodhpur Vihyut Vitran Nigam Ltd. Vs. State of Raj. & Ors.)

Date of Judgment : August 13th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sumeet Mehta, for the petitioner.

By way of filing this writ petition, the petitioner has challenged the order impugned dated 23.3.2004 (Annexure-3) as well as all consequential orders thereafter passed by respondent No.3 along with the prayer that the land and building owned by the petitioner-Company may be declared to be exempted from tax and charge to tax under the provisions of the Rajasthan Land & Building Tax Act, 1964. The petitioner has further prayed for restraining the respondents from initiating any proceedings against the petitioner-company for the recovery of tax.

Earlier, by way of filing writ petition being

SB Civil Writ Petition No.3196/2002, the petitioner has challenged the demand notice dated 8.7.2002 and assessment order dated 8.7.2002 by which tax was imposed upon the property of Jodhpur Vidhyut Vitaran Nigam Limited under the provisions of the Rajasthan Land & Building Tax Act. While deciding the aforesaid writ petition vide order dated 30.1.2003, this Court observed as follows :

> "The question involved herein as to whether the property on which the tax is being demanded vests in the Nigam or in the Government under the provisions of the Rajasthan Power Sector Reforms Act, 1999 (hereinafter referred to as the Act of 1999) which came into force on 19.7.2000. Certain properties by virtue of Section 3 of the Act, 1999 has been vested in the State Government. However, by virtue of Section 5 of the said Act certain properties stood transferred to the Nigam directly, therefore, if a question of fact as to whether the properties on which the tax is being demanded vested in the State or stood transferred to the Nigam. There is nothing on record to show that the assessing authority has applied its mind in determining as to whether the property had vested in the State or in the Nigam, though against that order the petitioner could have filed appeal because the assessment order does not explain anything, directing the petitioner to file appeal this would not serve any purpose as the real issue of fact has not been determined. Thus, the impugned

> assessment order dated 8.7.2002 (Ann.5) is set aside with liberty to the Assessing Authority to pass a fresh assessment order after hearing the parties on all factual and legal issues."

While observing as aforesaid, the aforesaid writ petition was disposed of finally.

After the said decision, the matter was decided afresh after providing opportunity of hearing to the petitioner vide impugned order dated 23.3.2004 (Annexure-3). Upon perusal of the above order, it is clear that the assessing authority was directed to determine as to whether the property had vested in the State or in the Nigam.

In para 11 of the writ petition, it is specifically stated by the petitioner that "Section 6 of the Rajasthan Land and Building Tax Act, 1964 (herein after referred to as the Act of 1964) provides for exemption for applicability of the Act of 1964 Clause 6 (a) provides for non-applicability of the Act to any land or building administered by the State of Rajasthan, Central Government or a local Authority. The petitioner being a Government company and the property and assets & liabilities of the State Government have been transferred to the petitioner which is a Government company, as such, the subject land and building owned and administered by the

petitioner company is exempted from any liability to tax by virtue of section 6(a) of the Act of 1964." It is admitted position of the case that the petitioner company is incorporated under the provisions of the Companies Act, 1956. In the writ petition, it is accepted by the petitioner that properties were transferred to the petitioner company and in para No.11 of the writ petition, the petitioner company is claiming exemption on the ground that according to Section 6 (a) of the Act, 1964, there is exemption provided for any land or building administered by the State Government, Central Government or Local Authorities. It is obvious that the petitioner-company, which is registered under the Companies Act does not fall in these three categories as provided under the provisions of Section 6(a) of the Act of 1964. As per para-9 of the writ petition, it is also the case of the petitioner that the petitioner Company is entrusted with the public duty of providing electric supply to the residents of the State of Rajasthan. As such, it is a State within the meaning of Article 12 of the Constitution of India. It is further stated that the petitioner Company is a Government Company as envisaged in Section 617 of the Companies Act, 1956 because the State Government is owing 100% share capital of the petitioner Company. Thus, it is admitted position of the case that though properties, assets and liabilities were transferred to the petitioner Company and the Company is holding the

said properties but only on the ground that the petitioner is a Government Company, therefore, it is exempted from the liability of tax.

In my opinion, in earlier writ petition, the matter was remitted to the assessing authority only to determine whether the property had vested in the State or in the Nigam and on that premise the impugned order was passed after providing opportunity of hearing to the petitioner wherein it was held that as per the notification of the State Government dated 28.6.2000, tax liability lies upon the petitioner-company because it is admitted that properties, assets and liabilities have been transferred to the Company and vested in the Company and the petitioner Company is registered under the Companies Act.

In the earlier writ petition, the matter was remitted by this Court to the assessing authority to determine as to whether the property had vested in State or in the Nigam after application of mind and then, a liberty was given to the assessing authority to pass fresh assessment order after hearing the parties. Therefore, the main issue was to be determined by the assessing authority as per the directions of this Court whether the property had vested in the State or in the Nigam. Thus, when it was not disputed by the petitioner Company that property is vested in the Company, then, there is no

question left with the assessing authority except to levy tax in accordance with the provisions of the Act. The contention of the learned counsel for the petitioner with regard to not applying mind at the time of deciding the controversy by the assessing authority and not considering his reply does not lies because as per the directions of this Court, the determination was to be made by the assessing authority that the property had vested in the State or Nigam and this fact was not disputed by the petitioner-Company before assessing authority, therefore, the impugned order dated 23.3.2004 (Annexure-3) does not suffer from any illegality. Now, this writ petition has been filed by the petitioner-Company on the ground that the petitioner-Company being an instrumentality of the State, is entitled to get exemption from tax liability but admittedly the petitioner Company is registered under the Companies Act and under Section 6 (a) of the Act, only State Government, Central Government and Local Authorities are entitled to get exemption. Thus, in my view, the case of the petitioner-Company does not fall under Section 6 (a) of the Act of 1964. Hence, this writ petition deserves to be dismissed.

Accordingly, the writ petition is dismissed.

(GOPAL KRISHAN VYAS), J.

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